

No. SC86573

**IN THE
SUPREME COURT OF MISSOURI**

JANE DOE I, et al.,

Appellants,

v.

THOMAS PHILLIPS, et al.,

Respondents.

**Appeal from the Jackson County Circuit Court
The Honorable Jon R. Gray, Circuit Judge**

RESPONDENT STOTTLEMYRE'S BRIEF

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STATEMENT OF FACTS

Course of Proceedings in the Circuit Court Below. Eight individuals who have been convicted of crimes that make them subject to the registration and notification requirements of Missouri's Sex Offender Registration Act (SORA; also known as Megan's Law), §§ 589.400 to 589.425, RSMo, filed their Petition for Declaratory Relief against Jackson County Sheriff Thomas Phillips, Jackson County Prosecutor Michael Sanders, and Missouri State Highway Patrol Colonel Roger D. Stottlemire in Jackson County Circuit Court on July 10, 2003. Legal File (LF) 1, 3-6. They sought a declaration that SORA is unconstitutional under the Missouri Constitution as violative of substantive due process, equal protection, the open courts guarantee, the right to a jury trial, and the prohibitions on ex post facto laws, retrospective laws, bills of attainder, and special laws. LF 9-14.

On June 4, 2004, following a hearing and briefing, the circuit court denied plaintiffs' motions for class certification and for a preliminary injunction prohibiting the enforcement of SORA. LF 220. Three additional individuals intervened as plaintiffs effective August 5, 2005. LF 39. At a hearing on the merits on August 5, 2004, the parties, by means of a stipulation of facts (LF 49-59), presented evidence in addition to that presented at the hearing on the preliminary injunction and, thereafter presented additional briefing (LF 75-197). LF 198.

On January 6, 2005, the circuit court determined that "SORA is a reasonable measure tailored to further legitimate state interests" and that "[i]t is not inconsistent with

any of the state constitutional provisions raised by plaintiffs.” LF 203. The court denied plaintiffs’ claims for injunctive and declaratory relief and entered judgment in favor of the defendants. LF 203.

Plaintiffs filed their notice of appeal on January 18, 2005. LF 205.

Statutory Framework. Under SORA, each person who, since July 1, 1979, has been convicted of, been found guilty of, or pled guilty to committing or attempting to commit certain identified offenses, is required to register with the chief law enforcement officer of the county in which the person resides. § 589.400. The offenses requiring registration are felony sex offenses under Chapter 566, RSMo, any offense under Chapter 566 where the victim was a minor, and certain other enumerated offenses against minors, including kidnapping, felonious restraint, promoting prostitution, and abuse of a child. Others who must register include persons who, since July 1, 1979, have been committed as criminal sexual psychopaths; have been found not guilty as a result of mental disease or defect of any of the enumerated offenses; have been convicted of, been found guilty of, or pled guilty to committing or attempting to commit an offense in another jurisdiction of an offense which, if committed in Missouri, would be a violation of Chapter 566 or a felony conviction of certain other enumerated offenses; or are required to register as a sex offender under federal or military law. § 589.400.

This registration requirement is a lifetime obligation unless the offense requiring registration is reversed, vacated, or set aside, or the registrant is pardoned. § 589.400.3.

Each registrant must provide information including name, address, place of employment, name of any college being attended, the crime requiring registration, the date, place, and brief description of the crime, the age and gender of the victim, fingerprints, and a photograph. § 589.407. The chief law enforcement officer of each county is to forward the completed offender registration form to the Missouri State Highway Patrol and the Patrol is to enter that information into the Missouri Uniform Law Enforcement System (MULES), where it will be available to members of the criminal justice system and other entities as provided by law. § 589.410. Registrants must report annually in person to the county law enforcement agency to verify the information they have provided. § 589.414.6. Registrants are also required to update their registration if they change their address, place of employment, college enrollment, or name. § 589.414. Updates required by such changes must be done within seven days in some cases and within ten days in others. *Id.* Registrants reporting changes in residence to a different county must do so in person in both counties. § 589.414.2. Additionally, registrants who are predatory or persistent sexual offenders, whose victim was less than 18 years old, or who have pled or been found guilty of failing to register or submitting false information when registering, must report in person every 90 days to the county law enforcement agency. § 589.414.5.

The chief law enforcement officer of each county is to maintain a complete list of the names, addresses, and crimes of each registrant in the county. Any person may request that list from the chief law enforcement officer. § 589.417.2. The other

information in the registry is not within the public record and is to be available only to courts, prosecutors, and law enforcement agencies. § 589.417.1. The publicly available information regarding registrants is to be maintained by the Highway Patrol, subject to appropriation, on a publicly accessible web page on the internet. § 43.650, RSMo.

Any person who is required to register under SORA and does not meet all its requirements is guilty of a class A misdemeanor, unless the person has been convicted of an unclassified felony under Chapter 566, a class A or B felony, or any felony involving a child under 14, in which case the person is guilty of a class D felony. § 589.425.1. Any person who commits a second or subsequent violation of the reporting requirements is guilty of a class D felony, unless the person has been convicted of an unclassified felony under Chapter 566, a class A or B felony, or any felony involving a child under 14, in which case the person is guilty of a class C felony. § 589.425.2.

Facts. The eleven plaintiffs have all been convicted of offenses requiring their registration under SORA and they are all currently registered. LF 50-51 (Stipulation of Fact (Stip.) ¶ 7).

Dr. Roy Lacoursiere, a forensic psychiatrist, testified via deposition to the following:

- a) Sex offenders are more likely to commit additional offenses than a member of the general public. LF 313-14 (Depo. pp. 8-9).
- b) Child molesters are more likely to commit additional offenses than a member of the general public. LF 314 (Depo, p. 9).

c) Some professional studies have shown recidivism rates by sex offenders of over 50% after 15 to 20 years. The reoffenses in these studies were new sexual offenses. LF 314 (Depo. pp. 10-11).

d) Bureau of Justice statistics show that 41% of those convicted of non-rape sexual assaults had a reoffense of some kind after three years. LF 314 (Depo. p. 11).

e) The studies noted are based on subsequent convictions. The recidivism rates are therefore conservative because sex offenses are often unreported and, to have a conviction, the offender must be apprehended. LF 314 (Depo. pp. 11-12).

f) Sex offenses are more often than not unreported. LF 314 (Depo. pp. 11-12).

g) The recidivism rate of sex offenders remains significant for many years. LF 315-16 (Depo. pp. 16-17).

h) A person convicted of any sex offense is significantly more likely to commit a sex offense than is a member of the public. LF 316 (Depo. p. 17).

i) No test or protocol is available that guarantees that a sex offender will not commit another sex offense. LF 318-19 (Depo. pp. 27-29).

j) Even if an evaluation of a sex offender resulted in a conclusion that he or she was very unlikely to reoffend, that sex offender (excluding the aged and

bedridden) would still be a higher risk for a future sex offense than would be a member of the public. LF 318-19 (Depo. pp. 27-29).

A Congressional report, H. Rep. No. 392, 103d Congress (1993), notes that “[e]vidence suggests that child sex offenders are generally serial offenders. Indeed one recent study concluded the ‘behavior is highly repetitive, to the point of compulsion,’ and found that 74% of imprisoned child sex offenders had one or more prior convictions for a sexual offense against a child.” (Citing “Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs,” 2 J. Interpersonal Violence 3 (1987).) LF 51-52 (Stip. ¶ 15), 341.¹

¹In addition to the portions of this Congressional report and of the one quoted in the next paragraph that were stipulated to by the parties, these reports were presented as exhibits to the circuit court. Tr. 43-45; LF 339-344, 345-369. Although the facts noted in these reports may not have been presented directly as evidence before the circuit court, the report to, and statement by, Congress of these facts are themselves facts. The mere report of this information in Congressional reports is a relevant fact in this case in which SORA is being challenged as unconstitutional. Assuming this Court concludes that no suspect class of fundamental right is implicated by SORA, its analysis of some of the constitutional challenges will involve a rational basis review. In examining laws under a rational basis review, a court will uphold a law if any basis may reasonably be conceived to justify it. *Batek v. Curators of Univ. of Mo.*, 920 S.W.2d 895, 899 (Mo. banc 1996). The information regarding sexual offenders reported in the Congressional reports is relevant to the

Another Congressional report, H. Rep. 256, 105th Congress (1997), notes:

Sexual offenders frequently target the most vulnerable members of our communities. Nearly two-thirds of State prisoners serving time for rape and sexual assault victimized children. Almost one-third of these victims were less than 11-years-old. Yet, not only do these violent criminals victimize the women and children upon which they prey, but they also victimize society as a whole. Americans have a depleted sense of trust and security because of these individuals.

. . . Sex offenders have a high likelihood of reoffending[.]n fact, they are nine times more likely to repeat their crimes than any other class of criminal.

LF 52 (Stip. ¶ 16), 349.

SORA registration provides a valuable tool to law enforcement officers to assist them in investigating crimes. LF 52 (Stip. ¶ 17). Public access to SORA registries provides information to members of the public to help them to take steps to protect themselves and their children. LF 52 (Stip. ¶ 18).

inquiry into whether any basis may be reasonably conceived to justify SORA.

STANDARD OF REVIEW

In this case, the appellants have appealed to obtain review of the a circuit court judgment regarding their claims for declaratory and injunctive relief from a statute claimed to be unconstitutional. This Court recently described the applicable standard of review in such a case as follows:

The court's judgment in a suit in equity will be affirmed unless there is no substantial evidence to support it, unless it was against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976); *Nothaus v. City of Salem*, 585 S.W.2d 244, 245 (Mo. App. S.D. 1979). Because this case involves statutory interpretation, which is a question of law, this Court's review is *de novo*. *Ochoa v. Ochoa*, 71 S.W.3d 593, 595 (Mo. banc 2002). Statutes are presumed constitutional. *In re Marriage of Kohring*, 999 S.W.2d 228, 231 (Mo. banc 1999). A statute will not be invalidated "unless it clearly and undoubtedly contravenes the constitution and plainly and palpably affronts fundamental law embodied in the constitution." *Id.*

Conseco Fin. Servicing Corp. v. Missouri Dep't of Revenue, 98 S.W.3d 540, 542 (Mo. banc 2003).

ARGUMENT I

Missouri's Sex Offender Registration Act (SORA) does not violate substantive due process rights of persons who must register under that Act because the state has a legitimate interest in protecting the public from sex offenses and SORA reasonably furthers that interest by providing information to law enforcement officers to assist them in investigating future crimes and to members of the public so they can take steps to protect themselves and their children.

The Missouri Constitution's guarantee of due process, Mo. Const. art. I, § 10, does provide substantive protections. *In re Marriage of Woodson*, 92 S.W.3d 780, 783 (Mo. banc 2003). In analyzing substantive due process claims, a court must first determine whether the government action interferes with fundamental rights or burdens a suspect class. *Id.*; *Casualty Reciprocal Exchange v. Missouri Employers Mut. Ins. Co.*, 956 S.W.2d 249, 256 (Mo. banc 1997). If a law interferes with a fundamental right or burdens a suspect class, then it must be narrowly tailored to serve a compelling state interest. *Deaton v. State*, 705 S.W.2d 70, 73 (Mo. App. E.D. 1985). Plaintiffs here do not assert a burden on any suspect class. They do assert interference with their fundamental rights.

Fundamental rights derive only from the United States Constitution. *Batek v. Curators of Univ. of Missouri*, 920 S.W.2d 895, 898 (Mo. banc 1996); *State ex rel. Cavallaro v. Goose*, 908 S.W.2d 133, 135 (Mo. banc 1995). Fundamental rights

include the rights to free speech, to vote, to freedom of interstate travel, as well as other basic liberties. *Casualty Reciprocal Exchange*, 956 S.W.2d at 256. Plaintiffs here suggest that SORA interferes with their fundamental right to exercise personal choice and freedom (including specifically “being free from restriction upon their personal freedom once their sentences have been served and/or they have successfully completed their probation or parole,” Appellants’ Brief, at 47), as well as to their rights to travel, to privacy, and to be free from unwanted publicity.

Rights to personal choice and freedom and to travel. Even assuming that a right to personal choice and freedom is sufficiently specific to constitute a fundamental right protected by substantive due process, SORA does not interfere with the personal freedom of those who must register under the law. *In re: W.M.*, 851 A.2d 431, 450 (D.C. Ct. App. 2004), *cert. denied*, 125 S. Ct. 885 (2005). As the court in *W.M.* noted, “[r]egistrants [under the D.C. sex offender registration act] are not prevented, for example, from changing their personal appearance, or from residing, working, attending school, or traveling wherever, whenever and with whomever they wish. The remain able to go about their daily lives and exercise their rights unimpeded.” *Id.* The same is true of Missouri’s SORA.

Two recent decisions concerning an Iowa statute prohibiting persons who have been convicted of sex offenses against minors from residing within 2000 feet of a school or day care facility have addressed the specific issue of whether freedom of choice in choosing a residence is a fundamental right entitled to strict scrutiny. *State v. Seering*,

No. 03-0776, 2005 WL 1790924, at *6 (Iowa July 29, 2005); *Doe v. Miller*, 405 F.3d 700, 713-14 (8th Cir. 2005). Both courts determined that a person's interest in choice of residency has never been recognized by themselves or the United States Supreme Court as a fundamental right and that questions involving this interest are to be given rational basis review. *Seering*, 2005 WL 1790924, at *6; *Doe*, 405 F.3d at 713-14. Because the right of choosing a place to live is not a fundamental right, neither would any similar rights of choice asserted by plaintiffs in this case be fundamental rights.

SORA also does not interfere with anyone's right to travel. SORA does not impede registrants from living where they want, from working where they want, or from moving about, either temporarily or permanently, when they want. SORA does not impose any restrictions on anyone's ability to come and go when and where they please.

Further, a state law implicates the right to travel only when it actually deters such travel, when impeding travel is its primary objective, or when it uses any classification which serves to penalize the exercise of that right. *Attorney General v. Soto-Lopez*, 106 S. Ct. 2317, 2321 (1986). Minor restrictions on a person's right to travel do not deny his or her fundamental right to travel. *Cramer v. Skinner*, 931 F.2d 1020, 1031 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 298 (1991). Missouri's SORA does not restrict a registrant's right to travel at all. It is possible that negative reaction from private citizens toward registrants will voluntarily restrict his or her own travel. But any such negative reaction flows from the registrant's own misconduct and only tangentially from the law. *Lanni v. Engler*, 994 F. Supp. 849, 855 (E.D. Mich. 1998)

Reporting requirements under sex offender registration laws have specifically been found by courts in other states not to burden a registrant's right to travel. *Cutshall v. Sundquist*, 193 F.3d 466, 478 (6th Cir. 1999), *cert. denied*, 120 S. Ct. 1554 (2000); *State v. Wigglesworth*, 63 P.3d 1185, 1190 (Or. Ct. App. 2003); *Ex Parte Robinson*, 80 S.W.3d 709, 715-16 (Tex. Ct. App. 2002), *aff'd*, 116 S.W.3d 794 (Tex. Crim. App. 2003). Neither does SORA burden the right to travel.

The obligations of SORA do not amount to an interference with fundamental rights that will trigger substantive due process protections. Providing the information required under SORA is no more onerous than any number of other common activities of every day life, such as filling out credit applications, warranty cards, or even sweepstakes entries. The submission of fingerprints and photographs is no more onerous than what many go through when applying for or obtaining employment. Regular reporting to the sheriff's department is not onerous in that its purpose is simply to verify the information already reported. Regular appearances are already a common part of modern life, such as for example licensing of automobiles. Because the SORA requirements are not any more burdensome than other obligations that people face every day, they do not interfere with any right of personal freedom or right to travel.²

²Plaintiffs express a concern that § 566.147, RSMo Supp. 2004, which bars sex offenders and certain other offenders from establishing residency within 1000 feet of schools or day care facilities, would permit real estate speculators to force such offenders from their homes by opening day care facilities nearby. Appellants' Brief,

at p. 49. This concern, however, is unfounded because this statute does not require such offenders with already established residences to move when schools or day car facilities are thereafter placed within 1000 feet of their homes. § 566.147.2, RSMo Supp. 2004.

Right to privacy and freedom from unwanted publicity. Neither the federal nor the Missouri Constitutions explicitly set out a right to privacy. *Cruzan v. Harmon*, 760 S.W.2d 408, 417 (Mo. banc 1988), *aff'd*, 110 S. Ct. 2841 (1990). This Court, however, has recognized a right to privacy and held that its basis “is the right to be let alone” and that the right “is, or at least grows out of, a constitutional right.” *Barber v. Time Inc.*, 159 S.W.2d 291, 294 (1942). “The cases decided by this Court under the right of privacy announced in *Barber* have generally involved, as did *Barber* itself, protection against publication of private facts.” *State v. Walsh*, 713 S.W.2d 508, 513 (Mo. banc 1986).

While the right to privacy encompasses personal information, it does not protect information readily available to the public. *State v. Williams*, 728 N.E.2d 342, 356 (Ohio 2000) (citing *Whalen v. Roe*, 97 S. Ct. 869, 876 (1977)), *cert. denied*, 121 S. Ct. 241 (2000). Plaintiffs’ right to privacy in this case is not implicated by SORA because it does not disclose information that is not already public. Registrants’ names, addresses, telephone numbers, employers, and crimes are already a matter of public record.

Some of the plaintiffs might argue that their crimes are not matters of public record because they received suspended impositions of sentence and have now successfully completed their probation with the result that the official records relating to these crimes are no longer accessible to the public under §§ 610.105 and 610.120, RSMo Supp. 2004.

Despite the closure of the official records of these crimes, however, plaintiffs’ crimes are still matters of public record. Their victims and their victim’s families will know of the crimes. Contemporary news accounts are also still available. Law enforcement officials

are aware of the crimes and are not barred from speaking of them. *State ex rel. Thurman v. Franklin*, 810 S.W.2d 694, 699-700 (Mo. App. S.D. 1991). Sections 610.105 and 610.120 do not “close the memories of persons who have personal knowledge.” *Id.* at 700. Even the official records would have been available during the plaintiffs’ probationary periods. § 610.105 (“If . . . imposition of sentence is suspended . . . , official records pertaining to the case shall thereafter be closed records *when such case is finally terminated*”) (emphasis added). Although the official records may now be closed, the crimes themselves are still part of the public’s knowledge. Moreover, even under § 610.105, “the court’s judgment or order or the final action taken by the prosecutor in such matters may be accessed.” Under SORA, only the name of the crime for which the offender must register is publicly accessible. § 589.417.2. That is no more information than what would be included in the court’s judgment, which is open under § 610.105.

Because the information available to the public under SORA is already publicly available, SORA does not breach any right to privacy. Courts that have addressed this issue have routinely upheld sex offender registration laws against right to privacy challenges. *E.g.*, *Doe v. Moore*, 410 F.3d 1337, 1345 (11th Cir. 2005); *Russell v. Gregoire*, 124 F.3d 1079, 1094 (9th Cir. 1997), *cert. denied*, 118 S. Ct. 1191 (1998); *Corbin v. Chitwood*, 145 F. Supp. 2d 92, 101 (D. Me. 2001); *Akella v. Michigan Dep’t of State Police*, 67 F. Supp. 2d 716, 728-29 (E.D. Mich. 1999); *People v. Cornelius*, 821 N.E.2d 288, 304 (Ill. 2004); *Martinez v. Commonwealth*, 72 S.W.3d 581, 585 (Ky.

2002); *People v. Malchow*, 739 N.E.2d 433, 441 (Ill. 2000); *Williams*, 728 N.E.2d at 356; *In re: W.M.*, 851 A.2d at 450-51; *In re Wentworth*, 651 N.W.2d 773, 778 (Mich. App. 2002).

Even active dissemination of sex offender information by the government does not infringe the right to privacy. “Active distribution, as opposed to keeping open the doors to government information, is a distinction without significant meaning. The information at issue is a public record, and its characteristic as such does not change depending upon how the public gains access to it.” *Williams*, 728 N.E.2d at 356.

There is also no violation of the right to privacy due to the compilation of information under SORA that would not otherwise be collected in one place for public dissemination. See *A.A. v. New Jersey*, 341 F.3d 206, 213 (3d Cir. 2003) (rejecting breach of privacy argument based on the state’s compilation in a sex offender registry of information, such as names, addresses, ages, and descriptive characteristics, that is available to the public, but in scattered locations); *Cornelius*, 821 N.E.2d at 299-300 (compilation and dissemination, via the internet, of truthful information that is already, although less conveniently, a matter of public record is not prohibited by the right to privacy); *In re: W.M.*, 851 A.2d at 450-51.

With regard to a right to be free from unwanted publicity, it does not appear that any such right has ever been found to exist under the Missouri Constitution, much less found to be fundamental. Besides, to whatever extent a registrant becomes notorious, that notoriety will result from his or her crime, not from SORA. As the United States

Supreme Court noted in *Smith v. Doe*, 123 S. Ct. 1140, 1150 (2003), in discussing the publication of sex offender information on the internet: “Widespread public access is necessary for the efficacy of the [sex offender registration and notification] scheme, and the attendant humiliation is but a collateral consequence of a valid regulation.” See also *Cornelius*, 821 N.E.2d at 302 (even if internet access to sex offender information “shames” the offender, this effect is the result of the offender’s crime itself, and not of the statutory requirements of registration and disclosure).

SORA rationally related to legitimate government interests. Because SORA neither burdens a suspect class nor impinges on a fundamental right, it need only be “rationally related to a legitimate state purpose.” *Casualty Reciprocal Exchange*, 956 S.W.3d at 257.

Although SORA contains no express statement of purpose, its patent intent is to provide information to law enforcement officers to assist them in investigating future crimes and to provide information to members of the public so they can take steps to protect themselves and their children. See, e.g., LF 51 (Stip. ¶ 11); *J.S. v. Beaird* 28 S.W.3d 875, 876 (Mo. banc 2000) (finding the “obvious legislative intent” behind SORA to be the “protect[ion] of children at the hands of sex offenders”); *Moore v. Avoyelles Correctional Center*, 253 F.3d 870, 872-73 (5th Cir. 2001) (finding sex offender notification law’s intent of alerting the community to the presence of sex offenders and of assisting the community to protect itself under the guidance of law enforcement), *cert. denied*, 122 S. Ct. 492 (2001); *Russell*, 124 F.3d at 1090-91; *Doe v. Pataki*, 120 F.3d

1263, 1277 (2d Cir. 1997), *cert. denied*, 118 S. Ct. 1066 (1998). These purposes behind SORA are a legitimate ones.³

SORA is also rationally related to these legitimate purposes. A registry of offenders will assist law enforcement officers in their investigations of crimes. Public notification that convicted sex offenders are living in the community will also assist citizens in taking whatever precautions they think necessary when they or their children are around registrants. Plaintiffs admit that SORA registration provides both a valuable tool for law enforcement officers and information to members of the public that will help them to take steps to protect themselves and their children. LF 52 (Stip. ¶¶ 17, 18). Courts in other jurisdictions have routinely concluded that sex offender registration and notification statutes are rationally related to legitimate state interests. *See, e.g., Doe v. Moore*, 410 F.3d at 1345-46; *Cutshall*, 193 F.3d at 482; *Cornelius*, 821 N.E.2d at 304-

³The purposes behind SORA, which essentially boil down to protection of public safety, especially the safety of the most vulnerable of citizens, are, indeed, compelling ones. Plaintiffs make no significant attempt to argue otherwise. *See* Appellants' Brief, at pp.51-52.

05; *In re: W.M.*, 851 A.2d at 451; *In re Ronnie A.*, 585 S.E.2d 311, 312 (S.C. 2003); *In re M.A.H.*, 20 S.W.3d 860, 865-65 (Tex. Ct. App. 2000); *Boutin v. LeFleur*, 591 N.W.2d 711, 718 (Minn 1999), *cert. denied*, 120 S. Ct. 417 (1999). See also *Smith v. Doe*, 123 S. Ct. 1140, 1152-54 (2003) (finding Alaska's comparable sex offender registration law reasonable means to meet legitimate state purpose in an *ex post facto* inquiry).

Plaintiffs contend that, at a minimum, SORA must have levels of registration classification (presumably with varied levels of registration duties and of public notification based on severity of offense) and a judicial safety-valve (presumably to permit individualized judicial review of an offender's dangerousness and need to be included in the registry). The Alaska statutes approved in *Smith*, however, have no judicial safety-valve provision and no levels of registration classification that restrict the amount of information available to the public based on level of offense. Alaska Stat. §§ 12.63.010 to 12.63.100 and 18.65.087.⁴ Similarly, Missouri's SORA need not have a judicial review provision or varying levels of public notification based on level of offense to be constitutionally valid. The General Assembly's decision not to provide for judicial evaluation of individual need to register or for varying levels of notification is more than justified because of the high recidivism rates of sex offenders (higher than other types of

⁴These Alaska sex offender registration statutes approved by the United States Supreme Court in *Smith v. Doe*, 123 S. Ct. 1140 (2003), are included in an appendix to this Brief.

offenders), because a person convicted of any sex offense is significantly more likely to commit a sex offense than a member of the public, because no test or protocol is available that guarantees that a sex offender will not commit another sex offense, and because, even if an evaluation of sex offender resulted in a conclusion that he or she was unlikely to reoffend, that sex offender (excluding only the aged and bedridden) would still be a higher risk for a future sex offense than would be a member of the public. LF 51-52 (Stip. ¶¶ 15, 16), 315-16 (Depo. pp.16-17), 318-19 (Depo. pp.27-29), 341, 349.

The Alaska statutes reviewed by the Supreme Court in *Smith* do limit registration to 15 years for those convicted of a single, non-aggravated, sex offense, Alaska Stat. § 12.63.020(a)(2), but this time limit for registration for certain offenders was not necessary to the decision upholding the constitutionality of the Alaska sex offender registration statutes. Missouri's lifetime registration requirements are also rationally related to legitimate state interests. As Dr. Lacoursiere testified, the recidivism rate of sex offenders remains significant for many years. LF 315-16 (Depo. pp. 16-17). Some professional studies have shown recidivism rates by sex offenders of over 50% after 15 to 20 years. LF 314 (Depo. pp. 10-11).

Because SORA's requirements are rationally related to legitimate state interests, the circuit court correctly determined that it does not deprive plaintiffs of any substantive due process rights and that decision should be affirmed.

ARGUMENT II

SORA is not an impermissible *ex post facto* law because its registration obligations are regulatory and not punitive and it is not an impermissible retrospective law because SORA is a remedial statute and it does not impair any vested rights or prejudice any person for past transactions in that it governs only those actions that occur after its enactment.

The Missouri Constitution, art. I, § 13, provides that ‘no ex post facto law, nor law . . . retrospective in operation, . . . can be enacted.

SORA is not a prohibited ex post facto law. In *Smith v. Doe*, 123 S. Ct. 1140, 1154 (2003), the United States Supreme Court held that Alaska’s sex offender registration law did not violate the *ex post facto* clause of the United States Constitution. Missouri’s SORA is substantially similar to Alaska’s. See *id.* at 1145-46. Recently, this Court has specifically analyzed Missouri’s SORA to determine whether it complies with the United States and Missouri Constitutions’ prohibition on ex post facto laws. *R.W. v. Sanders*, No. SC85652, 2005 WL 44388, at *2-*4 (Mo. banc January 11, 2005). Following the analysis of *Smith*, this Court determined that Missouri’s SORA was neither intended to be punitive, nor punitive in effect, but rather is civil and regulatory in nature. *Id.* Because SORA is civil and regulatory in nature, this Court held that it is not an invalid ex post facto law. *Id.* Plaintiffs here have presented no reason for the Court to alter its decision in *R.W.*

SORA is not a prohibited retrospective law. The constitutional prohibition on retrospective laws applies when the law at issue impairs some vested right or affects past transactions to the substantial prejudice of a person. *La-Z-Boy Chair Co. v. Director of Economic Dev.*, 983 S.W.2d 523, 525 (Mo. banc 1999). A vested right is one guaranteed by “a title, legal or equitable, to the present or future enjoyment of property or to the present or future enjoyment of the demand, or a legal exemption from a demand made by another.” *Fisher v. Reorganized School Dist. No. R-V*, 567 S.W.2d 647, 649 (Mo. banc 1978) (quoting *People ex rel. Eitel v. Lindheimer*, 21 N.E.2d 318, 321 (Ill. 1939)). But a vested right is something more than a mere expectation based on a supposed continuation of past law. *Fisher*, 567 S.W.2d at 649. Additionally, a “statute is not retrospective or retroactive . . . because it relates to prior facts or transactions but does not change their legal effect, or because some of the requisites for its action are drawn from a time antecedent to its passage, or because it fixes the status of an entity for the purpose of its operation.” *Jerry-Russell Bliss, Inc., v. Hazardous Waste Mgt. Comm’n*, 702 S.W.2d 77, 81 (Mo. banc 1985).

SORA applies to plaintiffs because of their past convictions of sex offenses. This application, however, neither deprives them of any vested right nor imposes upon them any new obligation based on a past event to their substantial prejudice. All they are required to do is provide certain information to the sheriff and then report to the sheriff periodically thereafter. They are not harmed in any way. They are denied no income or employment. They are deprived of no benefit otherwise available to them. They are not

prevented from moving about or from changing their domicile or from associating with whomever they choose.

SORA simply fixes the status of persons to whom it applies based on their past criminal record. A statute may use antecedent facts to establish the status of those to whom it applies. *Jerry-Russell Bliss*, 702 S.W.2d at 81; *State ex rel. Sweezer v. Green*, 232 S.W.2d 897, 901 (Mo. banc 1950) (upholding application of Missouri's criminal sexual psychopath law, which permitted civil commitment of those found to be criminal sexual psychopaths, to a person whose alleged sexual offenses occurred before the effective date of the law), *disapproved with regard to an unrelated issue*, *State v. Kirtley*, 327 S.W.2d 166, 168 (Mo. banc 1959); *Barbieri v. Morris*, 315 S.W.2d 711, 714-15 (Mo. 1958) (upholding suspension of driver's license on grounds that driver was "habitual violator of traffic laws" despite three of the four traffic violations upon which the suspension was based occurring before effective date of law under which suspension was imposed). In fixing its requirements based on antecedent facts, SORA's impact is not materially different from that of laws applying to criminal sexual psychopaths and habitual traffic violators that have been upheld in the face of challenges under the Missouri Constitution's prohibition on retrospective laws.

SORA is analogous to the federal statute governing possession of firearms by felons. 18 U.S.C. §922(g). This statute provides that it is unlawful for any person who has been convicted of a crime punishable by imprisonment for a term of more than one year to possess any firearm or ammunition that has traveled in interstate commerce.

Section 922(g) has been unsuccessfully challenged as retrospective and ex post facto by individuals prosecuted under it based on underlying offenses that occurred before the enactment of the statute. *E.g., United States v. Mitchell*, 209 F.3d 319, 322-23 (4th Cir. 2000) (citing cases), *cert. denied*, 121 S. Ct. 123 (2000). In *National Ass'n of Government Employees, Inc. v. Barrett*, 968 F. Supp. 1564, 1575-76 (N.D. Ga. 1997), *aff'd*, 155 F.3d 1276 (11th Cir.1998), plaintiffs who were barred from carrying firearms after the enactment of §922(g) for convictions that occurred before the prohibition, also challenged the constitutionality of §922(g) on the ground that it was impermissibly retrospective and therefore an ex post facto law. The court held that §922(g) was not retrospective, quoting the following from *United States v. Brady*, 26 F.3d 282, 291 (2d Cir. 1994), *cert. denied*, 115 S. Ct. 246 (1994):

Regardless of the date of [defendant's] prior conviction, the crime of being a felon in possession of a firearm was not committed until after the effective date of the statute. . . . [B]y [the date of defendant's conviction under § 922(g)(1), defendant] had more than adequate notice that it was illegal for him to possess a firearm because of his status as a convicted felon, and he could have conformed his conduct to the requirements of the law.

968 F. Supp. at 1576. The conduct regulated by § 922(g) is thus forward looking, based on the status of the offender, and not retrospective. It is the future gun possession that is prohibited. SORA is also forward looking. SORA applies if the offender has been convicted of certain predicate offenses, yet the conduct regulated all occurs after the

enactment of the statute. Offenders are required to register and can be convicted of the crime of not registering, but they have ample notice of their obligations and time to fulfill them. The obligation to register and the consequence of not doing so are transactions controlled by the statute, not the underlying offense.

Because SORA governs only those actions that occur after its enactment, and not before, SORA is not a retrospective law.

Further, the Missouri constitutional prohibition on retrospective laws does not apply to statutes dealing only with procedure or remedies. *Vaughan v. Taft Broadcasting Co.*, 708 S.W.2d 656, 660 (Mo. banc 1986). “No person may claim a vested right in any particular mode of procedure for the enforcement or defense of his rights, and where a new statute deals only with procedure it applies to all actions including those pending or filed in the future.” *Id.*, quoting *Scheidegger v. Greene*, 451 S.W.2d 135, 137 (Mo. 1970). In *Vaughan*, this Court, determining that the ability to seek punitive damages in a lawsuit was remedial matter and not a vested right, held that an amendment to the service letter statute restricting the circumstances in which punitive damages could be obtained did not run afoul of the prohibition on retrospective laws. 798 S.W.2d at 660-61. In *Scheidegger*, this Court held that the enactment of a statute permitting service on out-of-state tortfeasors in circumstances not previously authorized was not a prohibited retrospective law, even when applied to an alleged tort occurring before the statute was enacted, because it merely provided a new procedural method of obtaining jurisdiction over persons, firms, and corporations in other states. 451 S.W.2d at 138.

The registration obligations imposed by SORA are also procedural and remedial only. These obligations to appear periodically at their local sheriff's department and provide (or simply confirm) certain minimal information do not impose any duty on registrants that inhibits their ability to make a living, seek additional financial or social opportunities, or to live their lives as they see fit. Neither do the SORA obligations take any right or property from registrants. Any "right" not to appear before the sheriff periodically to provide information is no more substantive nor vested than the "right" to obtain punitive damages at issue in *Vaughan* or the "right" not to be subject to service at issue in *Scheidegger*.

The Supreme Court of Ohio has examined a sex offender registration and notification law in light of a constitutional prohibition on retrospective laws comparable to Missouri's. *State v. Cook*, 700 N.E.2d 570, 576-79 (Ohio 1998), *cert. denied*, 119 S. Ct. 1122 (1999). The Ohio Constitution's provision regarding retrospective laws is quite similar to Missouri's, stating that "[t]he general assembly shall have no power to pass retroactive laws." *Id.* at 576, *quoting* Ohio Const. art. II, § 28. As in Missouri, the Ohio prohibition does not apply to statutes that are remedial and procedural in nature. 700 N.E.2d at 577. Plaintiff in *Cook* also contended that application of the registration and notification provisions of Ohio's sex offender registration statute imposed substantive burdens on him with respect to a past transaction. *Id.* The Ohio Supreme Court held, however, that the obligations of this statute were *de minimis* procedural requirements, remedial in nature, that were necessary to achieve the goals of the statute. *Id.* at 578.

The Ohio court emphasized that if the Ohio sex offender registration act did not apply to require registration of previously convicted offenders, it would have provided no community protection at the time it passed and relatively little for some time thereafter. *Id.* The court also recognized that the public notification provisions could have negative effects on registrants, but found any harsh consequences of notification to be a result not of the sexual offender law, but instead, a direct consequence of the registrants' past actions. *Id.* at 579.

Just as with Ohio's law, the duties imposed by Missouri's SORA are *de minimis* and remedial only. SORA requirements are *de minimis* because registrants must report to the local sheriff's department no more than 4 times a year (and usually only once a year) to provide or confirm straightforward information about himself or herself and the crime for which he or she must register. See § 589.414, RSMo Supp. 2004 (additionally, registrants must report name and residence changes). SORA's requirements are remedial because the information provided, in total, will both enable citizens to take precautionary measures to stop crime before it happens and enable law enforcement agencies to more expeditiously solve crimes that do occur. As a procedural and remedial statute, SORA is not a prohibited retrospective law.

Plaintiffs claim here in particular that SORA violates their rights to privacy and to travel and functionally revokes their discharge from parole, and thus acts retrospectively. But plaintiffs do not have a constitutional right to privacy with respect to prior convictions as applied to sex offender registries. See generally *Cutshall v. Sundquist*, 193 F.3d

466, 481 (6th Cir.1999) (“The Constitution does not provide Cutshall with a right to keep his registry information private”), *cert. denied*, 120 S. Ct. 1554 (2000); *Russell v. Gregoire*, 124 F.3d 1079, 1090 (9th Cir.1997) (“Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.”), *cert. denied*, 118 S. Ct. 1191 (1998).

The SORA requirement that plaintiffs periodically update their registration information also does not impermissibly interfere with any right to travel. The requirement does not prevent them from going wherever in the world they want. Neither does it prevent them from moving to whatever location they desire. A requirement to appear in person at the sheriff’s office every 90 days is far less burdensome to the right to travel than the economic requirement of most people to appear at their workplace on five days out of seven.

Neither does SORA effectively revoke plaintiffs’ discharges from parole. Standard conditions of parole are much more invasive than duties under SORA. Although some of the plaintiffs may now have to report four times a year to the sheriff’s office, they are not faced with such common parole obligations and restrictions as being required to work, having to obtain permission to travel, being barred from associating with whomever they please, and being required to report to a parole officer whenever directed or to abide by any directive given by the parole officer. In contrast to parole restrictions, SORA’s registration obligations are not different in kind from a driver’s duty to appear at the local

license bureau periodically to renew his or her driver's license, a property owner's duty to report his or her taxable personal property to the local tax assessor or collector, or a young man's obligation to keep the Selective Service System updated as to his address.

SORA requires plaintiffs to do no more than they are required to do by many other obligations of modern day life.

SORA governs only those actions that occur after its enactment and does not impair any vested rights or prejudice any person for past transactions. Moreover, SORA is a remedial statute. Thus, SORA is not a constitutionally prohibited retrospective law. The circuit court's decision was correct and should be affirmed.

ARGUMENT III

SORA does not violate the equal protection clause of the Missouri Constitution because the state has a legitimate interest in protecting the public from sex offenses and SORA reasonably furthers that interest by providing information to law enforcement officers to assist them in investigating future crimes and to members of the public so they can take steps to protect themselves and their children.

Missouri's Constitution declares "that all persons . . . are entitled to equal rights . . . under the law." Mo. Const. art. I, § 2. The standard for analyzing claims under this equal protection clause is the same as that for analyzing substantive due process claims. *Casualty Reciprocal Exchange v. Missouri Employers Mut. Ins. Co.*, 956 S.W.2d 249, 256-57 (Mo. banc 1997). Thus, plaintiffs' equal protection claim fails for the same reasons, discussed in Point I of this Brief, that their substantive due process claim fails. In short summary, the obligations imposed by SORA reasonably further legitimate state interests.

Plaintiffs take particular issue with SORA because its obligations apply to all sex offenders without concern for the relative risk of individuals to commit offenses. But a state may reasonably place obligations on sex offenders as a class without any individual risk assessment. *People v. Malchow*, 714 N.E.2d 583, 590 (Ill. App. 1999), *aff'd*, 739 N.E.2d 433 (Ill. 2000) See also *Smith v. Doe*, 123 S. Ct. 1140, 1153 (2003) (same conclusion in an *ex post facto* analysis). This is especially so in light of Dr.

Lacoursiere's testimony that a person convicted of any sex offense is significantly more likely to commit a sex offense than is a member of the public. LF 316 (Depo. p. 17). Because any sex offender is more likely to reoffend with a sex offense than others, it is reasonable to impose SORA obligations on all sex offenders without making individual risk determinations. Any sex offender is a larger risk than a non-sex offender.

Plaintiffs also take issue with the application of SORA to sex offenders but not to other violent offenders, such as murderers. But as many courts have held, it is reasonable for a state to place special requirements on sex offenders that do not apply to other offenders. *Mahfouz v. Lockhart*, 826 F.2d 791, 794 (8th Cir. 1987) ("state's decision to distinguish sex offenders as a group from other inmates and exclude them from the work release program is rationally related to the legitimate government purpose of preventing sex crimes and thus does not violate the equal protection clause"); *Gale v. Moore*, 763 F.2d 341, 343-44 (8th Cir. 1985) (no equal protection violation in different standard of parole for sexual offenders); *Doe v. Weld*, 954 F. Supp. 425, 436 (D. Mass 1996) ("treating juveniles who commit sex crimes differently from other juvenile offenders is rational: the legislature determined that sex offenders pose a higher danger of recidivism than other offenders, and that disparate treatment is needed to promote public safety"); *State v. Radke*, 657 N.W.2d 66, 77 (Wis. 2003) (rejecting equal protection challenge to state law that placed greater burdens on sex offenders than other offenders).

Many courts examining offender reoffense rates have confirmed what the evidence shows here: that sex offenders pose a larger risk of recidivism than do other offenders. E.g.,

Smith v. Doe, 123 S. Ct. at 1153 (“risk of recidivism posed by sex offenders is ‘frightening and high’”) (quoting *McKune v. Lile*, 122 S. Ct. 2017, 2025 (2002)); *Connecticut Dep’t of Pub. Safety v. Doe*, 123 S. Ct. 1161, 1163 (2003); *Cutshall v. Sundquist*, 193 F.3d 466, 476 (6th Cir.1999); *Radke*, 657 N.W.2d at 69. This has also been the conclusion of the United States Congress. See H. Rep. No. 392, 103d Congress (1993) (LF 341); H. Rep. 256, 105th Congress (1997) (LF 349). These conclusions are amply supported by empirical studies. Rapists have been found to have a recidivism rate of 49.4% to 63.8% and child molesters have been found to have a recidivism rate of 42% to 72%. Comparet-Cassani, *A Primer on the Civil Trial of a Sexually Violent Predator*, 37 San Diego Law Review, 1057, 1072 (2000); Prentky, *Recidivism Rates Among Child Molester and Rapists: A Methodological Analysis*, 21 Law and Human Behavior 635 (1997); R. Karl Hanson, et al., *Long-Term Recidivism of Child Molesters*, 61 Consulting and Clinical Psychol. 646, 648 (1993); *Recidivism of Sex Offenders*, Center for Sex Offender Management (May 2001). These numbers may actually be higher since most sexual crimes go unreported. LF 314 (Depo. pp. 11-12). See also Groth, *Undetected Recidivism Among Rapists and Child Molesters*, 28 Crime and Delinquency 450 (1982).

The impact of sex crimes and crimes against children on both the victim and society as a whole is devastating. *Doe v. Pataki*, 120 F.3d 1263, 1266 (2d Cir. 1997), 118 S. Ct. 1066 (1998); H. Rep. 256 (LF 349). Due to the particular threat of sex offenders to reoffend and the severe impact of sex crimes and crimes against children, SORA’s placement of obligations on sex offenders and those who have committed crimes against children, but not on other types of

offenders, is not irrational. *See Cutshall v. Sundquist*, 193 F.3d 466, 482-83 (6th Cir. 1999), *cert. denied*, 120 S. Ct. 1554 (2000).

Plaintiffs also take issue with the application of SORA requirements to even those who plead guilty and receive suspended sentences. But it is reasonable for SORA to require registration of offenders who received suspended sentences together with offenders whose sentences were not suspended. The only difference between sex offenders who receive suspended sentences and those whose sentences are not suspended is the nature of the sentence. The nature of a sex offender's sentence, however, bears no reasonable relationship to the offender's likelihood to reoffend.

Plaintiffs' claim seems to be that a person receiving a suspended sentence is less likely to actually have committed a sex offense. Plaintiffs (at page 68 of Appellants' Brief) hypothesize the case of a person who chooses to plead guilty in return for a suspended imposition of sentence to avoid the embarrassment of trial or to obtain the benefit of removal of the conviction from his or her record at the end of a probationary period. But, if the reason for pleading guilty in return for a suspended imposition of sentence is the eventual removal of the conviction from the official record, that is no evidence at all of actual innocence. There is no reason to believe that that person did not commit the charged sex offense. Therefore, that is not a reasonable basis for exempting that person from SORA's requirements.

It is also unreasonable to exempt the person who pled guilty in return for a suspended imposition of sentence to avoid the embarrassment of trial from SORA requirements. The actually guilty are just as likely to want to avoid the embarrassment of trial as the innocent.

Besides, a plea of guilt in any circumstances is an adequate basis for concluding the offender did commit the crime. It is not reasonable to require the state to always assume that such a plea is motivated by anything other than the offender's actual guilt, or even to impose a burden on the state to look behind the plea of guilt for some more innocent motivation. In short, a plea of guilt to a sex crime is a quite reasonable basis on which to impose registration as a sex offender.

Application of SORA requirements to those receiving suspended impositions of sentence is little different than the situation at issue in *Boutin v. LeFleur*, 591 N.W.2d 711 (Minn. 1999), *cert. denied*, 120 S. Ct. 417 (1999). The plaintiff in that case, who pleaded guilty to a non-sex related claim, asserted that he should not be required to register as a predatory offender under Minnesota's sex offender registration law. The plaintiff had initially been charged with counts of assault and criminal sexual assault, and eventually pled guilty to assault only. *Id.* at 713. Minnesota's law requires registration of persons who are charged with a sex crime and thereafter are convicted of that offense or another offense arising out of the same circumstances. *Id.* at 714 (citing Minn. Stat. § 243.166). The court held that keeping a list of offenders who were convicted of sex offenses or of any offense arising from circumstances out of which charges of sex offenses were made was rationally related to a legitimate state interest. *Id.* at 718. Similarly, Missouri's maintenance of a list of those who have been sentenced for sex offenses, suspended or not, is rationally related to its interest in protecting the public and solving crimes.

Plaintiffs also contend that applying SORA to persons who plead not guilty but who are then convicted of a sex offense and given a suspended imposition of sentence is improper because such a conviction is not appealable. But requiring registration in such cases is reasonable because the finding of guilt is ample evidence that the person is a sex offender from whose registration the public would benefit. Any inability to appeal a suspended imposition of sentence does not diminish this evidence. Besides, if a person in this situation desired the ability to appeal, a court presumably would alter the sentence at the offender's request to permit an appeal. In any event, plaintiffs here admit that none of them fall into this situation. Therefore, they have no standing to pursue this point.

SORA does not establish suspect classes or impinge on fundamental rights. SORA reasonably furthers legitimate state interests. Therefore it does not run counter to plaintiffs' rights to equal protection and the decision of the circuit court reaching this conclusion should be affirmed.

ARGUMENT IV

SORA does not violate the Missouri Constitution's prohibition of Bills of Attainder because the obligations imposed by SORA are not punitive in that these obligations do not fall within the historic meaning of punishment, these obligations are not excessive in light of SORA's regulatory purpose, and there is no evident legislative intent behind SORA to punish registrants.

The Missouri Constitution prohibits the General Assembly from attainting any person of treason or a felony. Mo. Const. art I, § 30. One element of a bill of attainder is that it inflicts punishment. *State ex rel. Bunker Resource Recycling and Reclamation, Inc. v. Mehan*, 782 S.W.2d 381, 385-86 (Mo. banc 1990); *State v. Graves*, 182 S.W.2d 46, 54 (Mo. 1944) (applying 1875 Constitution). SORA does not. See *Smith v. Doe*, 123 S. Ct. 1140, 1147-54 (2003) (finding that Alaska's substantially similar sex offender registration law does not inflict punishment).

Plaintiffs here focus on three factors in asserting that SORA inflicts punishment. These three factors are (1) whether the challenged statute falls within the historical meaning of punishment; (2) whether the statute, viewed in the light of the severity of burdens it imposes, can reasonably be said to advance a nonpunitive purpose; and (3) whether the legislative record discloses an intent to punish. *Bunker Resource*, 782 S.W.2d at 387. The Court in *Smith* examined each of these factors in relation to Alaska's sex offender registration law, and concluded that the law did not institute any punishment.

First, the Court in *Smith* compared the registration and notification obligations imposed by Alaska's law to historical forms of punishment, and found these obligations not to be similar. *Id.* at 1149-51. The same is true of Missouri's comparable registration and notification obligations.

Second, the Court in *Smith* examined the severity of the burden imposed by Alaska's statute, including the duration of Alaska's reporting requirements (in some cases offenders must report quarterly for their lifetimes, see *id.* at 1146) and wide dissemination of the information via the internet, and determined them not to be excessive in light of the purpose of the statute. *Id.* at 1153-54. Missouri's SORA obligations are no different.

Third, the intent of Alaska's law – protecting the public from sex offenders (123 S. Ct. at 1147) – is the same as the obvious intent of Missouri's SORA. See *J.S. v. Beaird* 28 S.W.3d 875, 876 (Mo. banc 2000) ("The obvious legislative intent for enacting [SORA] was to protect children from violence at the hands of sex offenders"). The Court in *Smith* found this intent to be civil and administrative, rather than punitive. 123 S. Ct. at 1149.

Because the obligations imposed by SORA are not punitive, SORA does not violate the Bill of Attainder clause. See *Bunker Resource*, 783 S.W.2d at 386-87.

ARGUMENT V

SORA does not violate the Missouri Constitution's prohibition on Special Laws because the legislature had a rational basis for establishing the boundaries of the class as it did.

“In essence, the test for ‘special legislation’ under article III, § 40, of the Missouri Constitution, involves the same principles and considerations that are involved in determining whether the statute violates equal protection in a situation where neither a fundamental right nor suspect class is involved, i.e., where a rational basis test applies.”

Fust v. Attorney General, 947 S.W.2d 424, 432 (Mo. banc 1997) (quoting *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 832 (Mo. banc 1991)). A law does not run afoul of the special law prohibition as long as the legislature had a rational basis for establishing the boundaries of the class as it did. *Blaske*, 821 S.W.2d at 832. In this case, the legislature established a class of sex offenders, but excluded other offenders. As discussed in Point III of this Brief, given that sex offenders pose a particular threat of reoffending and that the impact of sex crimes and crimes against children are particularly severe, placing obligations on those who commit sex crimes and other crimes against children, but on not other types of offenders, is reasonable. *Cutshall v. Sundquist*, 193 F.3d 466, 482-83 (6th Cir. 1999), *cert. denied*, 120 S. Ct. 1554 (2000); *Doe v. Weld*, 954 F. Supp. 425, 436 (D. Mass 1996); *State v. Radke*, 657 N.W.2d 66, 77 (Wis. 2003). Therefore, SORA is consistent with the Special Law provisions of the Missouri Constitution. See also *Snyder v. State*, 912 P.2d 1127, 1131-32 (Wyo. 1996)

(upholding Wyoming sex offender registration law against challenge under the Wyoming Constitution's comparable prohibition against special laws, Wyo. Const. art. 3, § 27).

CONCLUSION

For the foregoing reasons, the Respondent Stottlemire urges this Court to affirm the judgment of the Jackson County Circuit Court entered in his favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

AND OF COMPLIANCE WITH RULE 84.06(b) AND (c)

I hereby certify that one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, this ____ day of August, 2005, to:

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I also certify that the foregoing brief complies with the limitations contained in Rule 84.06(b) and that the brief contains _____ words, excluding the Table of Contents and the Table of Authorities.

I further certify that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses, and is virus-free.

Assistant Attorney General

APPENDIX

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